

SENATE BILL No. 8

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-13-2; IC 9-24-6-15; IC 9-30; IC 14-15-8; IC 35-33-1-6.

Synopsis: Blood and breath alcohol concentrations. Reduces from 0.10% to 0.08% the percentage of alcohol concentration equivalent in a person's blood or breath that is necessary to constitute prima facie evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated. Reduces the range of the percentage of alcohol concentration equivalent in a person's blood or breath that is necessary to constitute relevant evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated (from at least 0.05% but less than 0.10% to at least 0.05% but less than 0.08%). Makes conforming amendments.

Effective: July 1, 2001.

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January 8, 2001, read first time and referred to Committee on Public Policy.



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 8

A BILL FOR AN ACT to amend the Indiana Code concerning blood and breath alcohol concentrations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 9-13-2-131, AS AMENDED BY P.L.1-2000,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]: Sec. 131. "Prima facie evidence of intoxication"
4 includes evidence that at the time of an alleged violation the person had
5 an alcohol concentration equivalent to at least ~~ten-hundredths (0.10)~~
6 **eight-hundredths (0.08)** gram of alcohol per:
7 (1) one hundred (100) milliliters of the person's blood; or
8 (2) two hundred ten (210) liters of the person's breath.
9 SECTION 2. IC 9-13-2-151, AS AMENDED BY P.L.1-2000,
10 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2001]: Sec. 151. "Relevant evidence of intoxication" includes
12 evidence that at the time of an alleged violation a person had an alcohol
13 concentration equivalent to at least five-hundredths (0.05) gram, but
14 less than ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of
15 alcohol per:
16 (1) one hundred (100) milliliters of the person's blood; or
17 (2) two hundred ten (210) liters of the person's breath.



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SECTION 3. IC 9-24-6-15, AS AMENDED BY P.L.1-2000, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. A person who operates a commercial motor vehicle with an alcohol concentration equivalent to at least four-hundredths (0.04) gram but less than ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

SECTION 4. IC 9-30-5-1, AS AMENDED BY P.L.1-2000, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who operates a vehicle with an alcohol concentration equivalent to at least ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class C misdemeanor.

(b) A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class A misdemeanor.

(c) A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor.

(d) It is a defense to subsection (c) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 5. IC 9-30-5-4, AS AMENDED BY P.L.1-2000, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;



commits a Class D felony. However, the offense is a Class C felony if, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this chapter.

(b) A person who violates subsection (a) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 6. IC 9-30-5-5, AS AMENDED BY P.L.120-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;

commits a Class C felony. However, the offense is a Class B felony if, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this chapter.

(b) A person who violates subsection (a) commits a separate offense for each person whose death is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 7. IC 9-30-5-8.5, AS AMENDED BY P.L.1-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8.5. (a) A person who:

(1) is less than twenty-one (21) years of age; and

(2) operates a vehicle with an alcohol concentration equivalent to at least two-hundredths (0.02) gram but less than ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

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(b) In addition to the penalty imposed under this section, the court may recommend the suspension of the driving privileges of the operator of the vehicle for not more than one (1) year.

SECTION 8. IC 9-30-6-15, AS AMENDED BY P.L.1-2000, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) At any proceeding concerning an offense under IC 9-30-5 or a violation under IC 9-30-15, evidence of the alcohol concentration that was in the blood of the person charged with the offense:

(1) at the time of the alleged violation; or

(2) within the time allowed for testing under section 2 of this chapter;

as shown by an analysis of the person's breath, blood, urine, or other bodily substance is admissible.

(b) If, in a prosecution for an offense under IC 9-30-5, evidence establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the offense within the period of time allowed for testing under section 2 of this chapter; and

(2) the person charged with the offense had an alcohol concentration equivalent to at least ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood at the time the test sample was taken; or

(B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

(c) If evidence in an action for a violation under IC 9-30-5-8.5 establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the violation within the time allowed for testing under section 2 of this chapter; and

(2) the person charged with the violation:

(A) was less than twenty-one (21) years of age at the time of the alleged violation; and

(B) had an alcohol concentration equivalent to at least two-hundredths (0.02) gram of alcohol per:

(i) one hundred (100) milliliters of the person's blood; or

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(ii) two hundred ten (210) liters of the person's breath;
 at the time the test sample was taken;
 the trier of fact shall presume that the person charged with the violation
 had an alcohol concentration equivalent to at least two-hundredths
 (0.02) gram of alcohol per one hundred (100) milliliters of the person's
 blood or per two hundred ten (210) liters of the person's breath at the
 time the person operated the vehicle. However, the presumption is
 rebuttable.

(d) If, in an action for a violation under IC 9-30-15, evidence
 establishes that:

(1) a chemical test was performed on a test sample taken from the
 person charged with the offense within the time allowed for
 testing under section 2 of this chapter; and

(2) the person charged with the offense had an alcohol
 concentration equivalent to at least four-hundredths (0.04) gram
 of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

at the time the test sample was taken;

the trier of fact shall presume that the person charged with the offense
 had an alcohol concentration equivalent to at least four-hundredths
 (0.04) gram of alcohol by weight in grams per one hundred (100)
 milliliters of the person's blood or per two hundred ten (210) liters of
 the person's breath at the time the person operated the vehicle.
 However, this presumption is rebuttable.

SECTION 9. IC 9-30-10-4, AS AMENDED BY P.L.32-2000,
 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JULY 1, 2001]: Sec. 4. (a) A person who has accumulated at least two
 (2) judgments within a ten (10) year period for any of the following
 violations, singularly or in combination, not arising out of the same
 incident, and with at least one (1) violation occurring after March 31,
 1984, is a habitual violator:

(1) Reckless homicide resulting from the operation of a motor
 vehicle.

(2) Voluntary or involuntary manslaughter resulting from the
 operation of a motor vehicle.

(3) Failure of the driver of a motor vehicle involved in an accident
 resulting in death or injury to any person to stop at the scene of
 the accident and give the required information and assistance.

(4) Operation of a vehicle while intoxicated resulting in death.

(5) Before July 1, 1997, operation of a vehicle with at least
 ten-hundredths percent (0.10%) alcohol in the blood resulting in

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death.

(6) After June 30, 1997, **and before July 1, 2001**, operation of a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath;

resulting in death.

(7) After June 30, 2001, operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath;

resulting in death.

(b) A person who has accumulated at least three (3) judgments within a ten (10) year period for any of the following violations, singularly or in combination, not arising out of the same incident, and with at least one (1) violation occurring after March 31, 1984, is a habitual violator:

(1) Operation of a vehicle while intoxicated.

(2) Before July 1, 1997, operation of a vehicle with at least ten-hundredths percent (0.10%) alcohol in the blood.

(3) After June 30, 1997, **and before July 1, 2001**, operation of a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath.

(4) After June 30, 2001, operation of a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the blood; or

(B) two hundred ten (210) liters of the breath.

(5) Operating a motor vehicle while the person's license to do so has been suspended or revoked as a result of the person's conviction of an offense under IC 9-1-4-52 (repealed July 1, 1991), IC 9-24-18-5(b) (repealed July 1, 2000), IC 9-24-19-3, or IC 9-24-19-5.

~~(5)~~ **(6) Operating a motor vehicle without ever having obtained a license to do so.**

~~(6)~~ **(7) Reckless driving.**

~~(7)~~ **(8) Criminal recklessness involving the operation of a motor vehicle.**

~~(8)~~ **(9) Drag racing or engaging in a speed contest in violation of**

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~~(9)~~ **(10)** Violating IC 9-4-1-40 (repealed July 1, 1991), IC 9-4-1-46 (repealed July 1, 1991), IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-1(4), IC 9-26-1-2(1), IC 9-26-1-2(2), IC 9-26-1-3, or IC 9-26-1-4.

~~(10)~~ **(11)** Any felony under an Indiana motor vehicle statute or any felony in the commission of which a motor vehicle is used.

A judgment for a violation enumerated in subsection (a) shall be added to the violations described in this subsection for the purposes of this subsection.

(c) A person who has accumulated at least ten (10) judgments within a ten (10) year period for any traffic violation, except a parking or an equipment violation, of the type required to be reported to the bureau, singularly or in combination, not arising out of the same incident, and with at least one (1) violation occurring after March 31, 1984, is a habitual violator. However, at least one (1) of the judgments must be for a violation enumerated in subsection (a) or (b). A judgment for a violation enumerated in subsection (a) or (b) shall be added to the judgments described in this subsection for the purposes of this subsection.

SECTION 10. IC 9-30-10-9, AS AMENDED BY P.L.10-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) If a court finds that a person:

- (1) is a habitual violator under section 4(c) of this chapter;
- (2) has not been previously placed on probation under this section by a court;
- (3) operates a vehicle for commercial or business purposes, and the person's mileage for commercial or business purposes:

- (A) is substantially in excess of the mileage of an average driver; and

- (B) may have been a factor that contributed to the person's poor driving record; and

- (4) does not have:

- (A) a judgment for a violation enumerated in section 4(a) of this chapter; or

- (B) at least three (3) judgments (singularly or in combination and not arising out of the same incident) of the violations enumerated in section 4(b) of this chapter;

the court may place the person on probation in accordance with subsection (c).

(b) If a court finds that a person:

- (1) is a habitual violator under section 4(b) of this chapter;



- (2) has not been previously placed on probation under this section by a court;
- (3) does not have a judgment for any violation listed in section 4(a) of this chapter;
- (4) has had the person's driving privileges suspended under this chapter for at least five (5) consecutive years; and
- (5) has not violated the terms of the person's suspension by operating a vehicle;

the court may place the person on probation in accordance with subsection (c). However, if the person has any judgments for operation of a vehicle **before July 1, 2001**, while intoxicated or with **an alcohol concentration equivalent to at least ten-hundredths percent (0.10%) (0.10) gram of alcohol by weight in grams in per** one hundred (100) milliliters of the blood or two hundred ten (210) liters of the breath, **or for the operation of a vehicle after June 30, 2001, while intoxicated or with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the blood, or two hundred ten (210) liters of the breath**, the court, before the court places a person on probation under subsection (c), must find that the person has successfully fulfilled the requirements of a rehabilitation program certified by one (1) or both of the following:

- (A) The division of mental health.
- (B) The Indiana judicial center.

(c) Whenever a court places a habitual violator on probation, the court:

- (1) shall record each of the court's findings under this section in writing;
- (2) shall obtain the person's driver's license or permit and send the license or permit to the bureau;
- (3) shall direct the person to apply to the bureau for a restricted driver's license;
- (4) shall order the bureau to issue the person an appropriate license;
- (5) shall place the person on probation for a fixed period of not less than three (3) years and not more than ten (10) years;
- (6) shall attach restrictions to the person's driving privileges, including restrictions limiting the person's driving to:
 - (A) commercial or business purposes or other employment related driving;
 - (B) specific purposes in exceptional circumstances; and
 - (C) rehabilitation programs;



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(7) shall order the person to file proof of financial responsibility for three (3) years following the date of being placed on probation; and

(8) may impose other appropriate conditions of probation.

(d) If a court finds that a person:

(1) is a habitual violator under section 4(b) or 4(c) of this chapter;

(2) does not have any judgments for violations under section 4(a) of this chapter;

(3) does not have any judgments or convictions for violations under section 4(b) of this chapter, except for judgments or convictions under section 4(b)(4) of this chapter that resulted from driving on a suspended license that was suspended for:

(A) the commission of infractions only; or

(B) previously driving on a suspended license;

(4) has not been previously placed on probation under this section by a court; and

(5) has had the person's driving privileges suspended under this chapter for at least three (3) consecutive years and has not violated the terms of the person's suspension by operating a vehicle for at least three (3) consecutive years;

the court may place the person on probation under subsection (c).

SECTION 11. IC 14-15-8-5, AS AMENDED BY P.L.1-2000, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. As used in this chapter, "prima facie evidence of intoxication" includes evidence that at the time of an alleged violation there was an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath.

SECTION 12. IC 14-15-8-6, AS AMENDED BY P.L.1-2000, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. As used in this chapter, "relevant evidence" includes evidence that at the time of the alleged violation there was an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least five-hundredths (0.05) gram and less than ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath.

SECTION 13. IC 14-15-8-8, AS AMENDED BY P.L.1-2000, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) Except as provided in subsections (b) and

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(c), a person who operates a motorboat:

(1) with an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least ~~ten-hundredths (0.10)~~ **eight-hundredths (0.08)** gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath; or

(2) while intoxicated;

commits a Class C misdemeanor.

(b) The offense is a Class D felony if:

(1) the person has a previous conviction under:

(A) IC 14-1-5 (repealed); or

(B) this chapter; or

(2) the offense results in serious bodily injury to another person.

(c) The offense is a Class C felony if the offense results in the death of another person.

SECTION 14. IC 35-33-1-6, AS AMENDED BY P.L.1-2000, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. A law enforcement agency may use the following chart to determine the minimum number of hours that a person arrested for an alcohol-related offense should be detained before his release pending trial:

BLOOD OR BREATH ALCOHOL LEVEL IN
HOURS AFTER INITIAL READING IS TAKEN

GRAMS	1	2	3	4	5	6	7	8	9	10	11	12	13	14
.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00	.000	.00
.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00	.000	.00
.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00	.000	.00
.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00	.000	.00
.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00	.000	.00
.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00	.000	.00
.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00	.000	.00
.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00	.000	.00
.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00	.000	.00
.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00	.000	.00
.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01	.000	.00
.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02	.005	.00
.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03	.015	.00
.22	.205	.19	.175	.16	.145	.13	.115	.10	.085	.07	.055	.04	.025	.01
.23	.215	.20	.185	.17	.155	.14	.125	.11	.095	.08	.065	.05	.035	.02
.24	.225	.21	.195	.18	.165	.15	.135	.12	.105	.09	.075	.06	.045	.03



1 .25 .235 .22 .205 .19 .175 .16 .145 .13 .115 .10 .085 .07 .055 .04
 2 .26 .245 .23 .215 .20 .185 .17 .155 .14 .125 .11 .095 .08 .065 .05
 3 Note: In order to find when a person will reach the legal blood or
 4 breath alcohol level, find the blood or breath alcohol level reading in
 5 the left hand column, go across and find where the blood or breath
 6 alcohol level reading is an alcohol concentration equivalent (as defined
 7 in IC 9-13-2-2.4) to below ~~ten-hundredths (0.10)~~ **eight-hundredths**
 8 **(0.08)** gram of alcohol per one hundred (100) milliliters of the person's
 9 blood or per two hundred ten (210) liters of the person's breath, then
 10 read up that column to find the minimum number of hours before the
 11 person can be released.

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